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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,999	10/31/2003	Hewlett E. Melton JR.	10982211-2	1439

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AGILENT TECHNOLOGIES, INC.  
Legal Department, DL429  
Intellectual Property Administration  
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Loveland, CO 80537-0599

EXAMINER

BAUTISTA, XIOMARA L

ART UNIT	PAPER NUMBER
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2179

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/698,999

Applicant(s)

MELTON ET AL.

Examiner

X. L. Bautista

Art Unit

2179

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5, 7-16 and 19-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-16 and 19-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Double Patenting*

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-5, 7-16 and 19-22 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-5, 7-16 and 19 of prior U.S. Patent No. 6,717,598.

This is a double patenting rejection.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 8-13 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Goetz et al* (US 6, 421,650 B1) and *KT Sommerville et al* (article

**entitled, “An Internet-Based Patient Education Tool Utilising Medication Pictures To Overcome Barriers To Learning About Complex Transplant Medication Regimens”, published March 2000).**

**Claim 1:**

Goetz discloses a medical device (patient component 12) for a patient having an input mechanism (input buttons 20, 22 and 24), indication mechanism, LCD panel 26, a processor, etc. (col. 4, lines 17-39; col. 9, lines 14-41; figs. 1, 6, 8A, 8B). The device prompts the user at a predetermined time by displaying information regarding time to take medication, the information providing graphic images (color images) of the medication to be taken (col. 4, lines 50-61; col. 8, lines 4-5). The user is also prompted to respond to the alarms that are triggered when an event occurs (col. 4, lines 54-67; col. 5, lines 1-2, 17-34); the input mechanism allows the user to reset the predetermined time (col. 3, lines 5-7; col. 7, lines 59-67; col. 8, lines 21-29).

Goetz does not teach that the graphic images of the medication are an actual size color image. However, Somerville discloses a medication planner that provides individualized pictures of medications. Somerville explains that the planner consists of pictures, dosing intervals, and special instructions about each medication. Somerville teaches a Medication Reference View containing a detailed reference for each medication including pictures of all available dosage forms, important potential adverse effects, and any special instructions for each

medication; and a Pill Cup View that contains actual size pictures of all the medications to be included in the pill cup at each dosing interval. Therefore, it would have been obvious to one ordinarily skilled in the art at the time the invention was made to modify Goetz's medical device and method of displaying medication information to include Somerville's teaching of displaying actual size images of medication because it provides users with information at-a-glance that facilitates selection of medication, especially for those who need to take multiple pills at the same time; this actual size images allow ease of use and quick identification of medication, minimize errors when making a selection, and simplify the use and operation of the device.

Claims 2 and 13:

Goetz teaches that the user is prompted to respond to an alarm and a possible sequence of steps is shown on the display (Goetz: fig. 5; col. 7, lines 5-7; col. 8, lines 11-23; col. 9, lines 14-27, 36, 41).

Claims 8 and 19:

Goetz discloses graphic images (icons) that are displayed to provide medical cautionary information to the user such as --Do not take with milk--, --Take with food--, --Take only with medication Y--, (col. 8, lines 1-8); and information about correct consumption of the medication, including possible side effects and potential interactions with other drugs and/or consumables such as alcohol, food, milk, etc.,

(col. 2, lines 11-21; col. 4, lines 62-65).

Claims 9 and 20:

Goetz teaches a pharmacy system (system 10) that includes a medical system (patient component 12), a clinician/provider (physician component 16), and a pharmacist component 18 (col. 4, lines 22-24). Goetz teaches that the components may communicate via wire or wireless links (col. 6, lines 20-28; col. 8, lines 54-67; abstract).

Claims 10 and 21:

See claim 9. Goetz teaches a clinician/provider system; and wire links and/or wireless links for communication with the system regarding the physical condition of the patient (col. 6, lines 20-28; col. 8, lines 54-67; abstract).

Claims 11 and 22:

Goetz teaches a medical system, a pharmacy system and a clinician/provider system; and a linking system for communication of patient medical and physical information among the components of the system (col. 6, lines 20-28; col. 8, lines 54-67; col. 17, lines 47-67; col. 18, lines 1-3, 47-65; abstract).

Claim 12:

See claim 1. Goetz teaches an indication mechanism (alarm) that can consist of an audio, physical, visual, or a combination these (col. 5, lines 23-24; col. 7, lines 63-66).

5. **Claims 3, 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Goetz/Sommerville* and *Reiner et al* (US 5,691,932).**

Claims 3 and 14:

Goetz teaches that the device maintains current and historical medical data, historical log of pharmaceutical agent consumption (col. 3, lines 1-4); and that the user is enabled to indicate an action taken for a triggered alarm (col. 4, lines 50-67; col. 5, lines 1-2, 20-23; col. 7, lines 27-57; col. 8, lines 1-24). Goetz/Sommerville does not teach a compliance icon. However, Reiner discloses a caregiver data collection and reminder system that has entry button, a display, alarms, etc., (col. 4, lines 66-67; col. 5, lines 89-17, 25-41; col. 7, lines 28-29). Reiner teaches that alphanumeric data and icons symbols are displayed to represent various possible indicators that provide the user with visual information about events, actions, time, etc., (col. 2, lines 49-57; col. 7, lines 20-23, 45-49; abstract; figs. 1, 2, 3a, 5-11). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Goetz/Sommerville's method for displaying medication information to include Reiner's teaching of using icons, especially include a compliance icon in Goetz/Sommerville interface to indicate that the patient has taken a medication because it provides the user with visual information of an entry; it is telling the user that the information that has been entered has been read by the system, and it reminds the user that the medicine has been taken just in

case the user forgets and tries to take the medication again.

Claim 7:

See claim 3. Goetz/Sommerville teaches time information to inform the patient about a medication to be taken and an event alarm (Goetz: col. 4, lines 50-67; col. 5, lines 1-2, 20-26; col. 7, lines 59-67. Goetz teaches that the alarm may be audible, visual or tactile (col. 5, lines 5, lines 16-34). Goetz does not specifically teach a timing icon. However, Reiner discloses a display screen displaying a medication icon and an icon spoon for indicating that information is relating to a medication mode. Reiner teaches a Record button that enables the user to set a medication time and displays the total number of doses in a day, and a numeric display that shows the last time the medication was administered. Reiner also teaches an Alarm button that enables the user the set the alarm function and time set of the next administering of medicine is displayed on the display (col. 9, lines 64-67; col. 10, lines 1-8). Therefore, it would have been further obvious to display a timing icon in the display because it provides the user with a conspicuous object that constantly and visually reminds the user of the time for the next medication every time the user views the display.

6. **Claims 4, 5, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Goetz/ Sommerville* and *Brown* (US 6,168,563 B1).**



Claims 4 and 15:

Goetz/Sommerville does not teach an outcome input mechanism for the input of patient physical condition information. However, Brown discloses a system for healthcare maintenance having a handheld unit, monitoring devices (col. 11, lines 40-46), display screen, keys, etc., (abstract; col. 6, lines 1-40; col. 11, lines 22-26). Brown teaches a networked system for remotely monitoring an individual and for communicating information to the individual. The system includes a server and a remote interface for entering in the server a set of queries to be answered by the individual. The system also includes a remotely programmable apparatus for interacting with the individual in accordance with a script program received from the server (col. 9, lines 20-41). Fig. 16 illustrates entry fields for entering response choices for a query wherein the user can enter information about his condition (col. 27, lines 24-45; col. 29, lines 32-67; figs. 17A, 18, 19).

Claims 5 and 16:

See claim 4. Goetz/Sommerville/Brown teaches outcome icons that indicate whether the patient feels well or bad (Brown: col. 27, lines 24-45; col. 29, lines 32-67; figures 16-19).

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to


applicant's disclosure. Robert McCarthy discloses compliance technology that produces a signal warning when it is time to take a medication, a graphics screen having information about the medication and interactive prompts asking the patient about drug side effects or interactions (page 32). M2 Presswire discloses a PDR Electronic Library having a list of drugs having full-color pill images (page 1). Michael Goodwin discloses a system that enables users to search for a brand name or generic name of medication, and once located, multiple icons are displayed that help users to find information about dosage, usage, overdose warnings, side effects, precautions, interactions, etc; and Goodwin also teaches "PharmAssit", a Windows-based product that shows the user what pills look like, and it includes full-color illustrations on use, side effects, and interactions (page 316). Samin K. Mistry et al discloses a Prescript TimeCap, which is a specialized cap for prescription vial; the cap containing a digital display that reads the date and time of the last dose administered, and can sound an alarm when the next dose is due (page 60). Saty Saty-Murti discloses "Clinical Pharmacology", which provides color PCX pictures of drugs (page 1628). Leigh Anne Brown et al discloses compliance aids such as Electronic reminder devices that will sound an alarm to signal a drug administration time (page 45).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to X. L. Bautista whose telephone number is (571)

272-4132. The examiner can normally be reached on Monday-Thursday 8:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (571) 272-4847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



X. L. Bautista  
Primary Examiner  
Art Unit 2179

xlh  
June 23, 2006